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No. _____

In The

Supreme Court of the United States

October Term, 1994

LUBA HILL,

Petitioner,

vs.

JAMES T. HILL,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Do constitutional due process guarantees protect parties to divorce litigation from judicial abuses when the litigation concerns custody of minor children?

II. Does due process of law require that state courts afford parties to divorce actions protection from attorney misconduct comparable to that afforded under the Sixth Amendment to defendants in criminal prosecutions, so that a court may not allow an attorney simply to walk out of the courtroom at the start of a divorce trial where minor children are involved without some sort of hearing or opportunity for the client to be heard?

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Luba Hill, petitions for a writ of certiorari to review the judgment and opinion of the Supreme Court of the State of Connecticut and of the Appellate Court of the State of Connecticut.

OPINIONS BELOW

The opinion of the Connecticut Appellate Court was rendered on July 19, 1994, and appears at 35 Conn. App. 160, 644 A.2d 951. It is printed as Appendix A to this petition.

A timely petition for certification to appeal was denied by the Connecticut Supreme Court on September 14, 1994. The order denying the petition is printed as Appendix B to this petition.

JURISDICTION

The Connecticut Appellate Court rendered its decision on the petitioner's appeal on July 19, 1994. A timely petition for certification to appeal was denied by the Connecticut Supreme Court on September 14, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall . . . deprive any person of life, liberty, or property without due process of law. . . . "

STATEMENT OF THE CASE

This was an action in Connecticut state court for dissolution of a 15-year marriage with four minor children, two of whom had suffered life-threatening illnesses.

The mother was a housewife. The father, who had been a successful investment banker, was temporarily unemployed. The family's primary asset was a large house in Greenwich which, when sold for $3.8 million, ultimately netted only a tenth of that after payment of debts and taxes. At the time of the divorce trial, the husband claimed there were no liquid assets and the family was subsisting on unemployment benefits and loans from family members.

As the case approached its scheduled trial date, the mother sought an adjournment because the father had failed to provide crucial financial records previously ordered by the court. The court agreed that no trial would take place until those records were provided. When the case was called for trial, however, and no such records had yet been supplied, the plaintiff mother, through her attorney, sought an adjournment on grounds of lack of preparation and the husband's failure to provide the court-ordered financial records. The request was denied, and the parties were ordered to begin the presentation of evidence immediately after a luncheon recess.

When court reconvened, however, the mother had fled in tears to a nearby church. In her absence, her privately-retained attorney announced that he would not go forward with the trial. The trial judge ordered him to proceed, noting that the mother's presence was not required under Connecticut law. The attorney again refused and walked out of the courtroom.

Instead of sanctioning the attorney, or taking appropriate action to prevent his departure, the trial judge nonsuited the plaintiff on the ground that her attorney

had departed and then granted a judgment of dissolution to the defendant father. The court awarded the father joint custody of the four minor children, who lived with the mother, although the father was known to be a secret fetishistic transvestite with a history of abusing the children. The court further awarded the father 40% of the marital assets and required the mother to be responsible for 60% of the debt, a substantial portion of which had been incurred fraudulently and without her knowledge and apparently not for the benefit of either her or the children.

The court ordered the father to pay only a total of $250 per week for the support of the four children, and $1 per year as lifetime alimony. The mother's timely motion to reopen the judgment and allow her to defend herself was denied by the court.

The mother appealed, expressly asserting that by forcing her without warning to go to trial unprepared and by allowing her attorney to abandon her and trying the case in his absence the court had denied her rights secured by the due process clause of the Fourteenth Amendment.

The Connecticut Appellate Court held that no constitutional rights were violated by the trial court's actions and that the attorney's action in abandoning his client and her cause by walking out of the courtroom was improper but was to be attributed to the client in determining her appeal. Because she was to be charged with her lawyer's misconduct, the Appellate Court held, and because that conduct was improper, she was not entitled

to appellate relief. 35 Conn. App. 160 at 168-71, 644 A.2d 951, 956-57.

The Connecticut Supreme Court denied the mother's petition to certify the appeal, without opinion.

REASONS FOR GRANTING THE WRIT

Because A Parent's Right To The Care And Custody Of Her Minor Children Is A "Fundamental Right" Protected By The Due Process Clause, She Is Entitled As A Matter Of Constitutional Law To Some Procedural Safeguards To Protect Her From Judicial Abuses And From Abandonment By Counsel Retained To Represent Her In Child Custody Proceedings.

This court has long held that "the Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985).

There is no right more substantive than the right to the care and custody of one's own children. "The rights to conceive and to raise one's children have been deemed 'essential,' *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), 'basic civil rights . . . ,' *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), and '[r]ights far more precious than property rights,' *May v. Anderson*, 345 U.S. 528, 533 (1953)." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). See also, *e.g.*, *Van Emrik v. Chemung County Dept. of Social Services*, 911 F.2d 863, 867 (2d Cir. 1990) (Newman, J.).

The amount of process which is due in any due process case of course depends upon the importance of

the interest at stake and the intrusiveness of the competing state concern. *E.g., Mathews v. Eldridge*, 424 U.S. 319 (1976).

The interest at stake in this case was transcendent. A mother whose entire adult life had been involved in the full-time care of four minor children subject to grave illness was confronted with a demand for joint custody of those children by a man who allegedly suffered from serious psychiatric disturbances and gender dysphoria. That same man demanded a substantial portion of the economic assets which constituted her only means of caring for the financial needs of those children. The risk of an erroneous deprivation of those interests was extremely high, and at the same time was a risk which could be obviated in large part by the assistance of competent counsel. The mother believed she had retained such counsel. There is no claim here that the court should have supplied counsel to her.

The issues here are (1) whether due process protects a parent in such circumstances from arbitrary denial of a fair opportunity to prepare for trial and (2) whether the state court should have permitted that retained attorney to abandon his client in the midst of trial without first affording her some sort of procedural due process to protect her against an erroneous deprivation of important rights. The state court cannot determine such matters without affording the affected party some form of hearing. See generally *Little v. Streater*, 452 U.S. 1 (1981); *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981).

In sanctioning the abandonment of this mother by her attorney in the midst of a child custody and support

trial, without any semblance of a due process hearing, and in further condoning the arbitrary and irrational denial of any reasonable opportunity to prepare for the trial of a child custody case, the Connecticut courts have sanctioned a denial of fundamental rights protected by the due process clause.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINION OF CONNECTICUT APPELLATE COURT

Hill v. Hill, 35 Conn. App. 160,
644 A.2d 951 (1994)

LUBA HILL *v.* JAMES T. HILL
(11464)
(12066)

DUPONT, C. J., and O'CONNELL and SPEAR, JS.

The plaintiff and the defendant filed separate appeals from the judgment of the trial court dissolving their marriage and issuing certain orders. *Held:*

1. The trial court did not abuse its discretion in denying the plaintiff's request for a continuance and did not violate the plaintiff's constitutional due process rights by proceeding to judgment in her absence and in the absence of her attorney; the plaintiff, by voluntarily leaving the courthouse and refusing to return, waived her right to be present at the hearing, and her attorney's leaving the courtroom without permission did not constitute a withdrawal of his appearance.

2. The plaintiff's claims that the trial court abused its discretion in making its orders, that it failed to protect her from a possible conflict of interest of her attorney and that that court improperly spoke ex parte with the defendant and his attorney before rendering a decision were unavailing.

3. The defendant could not prevail on his claim that the trial court's order requiring him to return a certain automobile to the plaintiff violated an automatic stay of the judgment; the challenged order served to preserve the status quo.

Argued February 17 – decision released July 19, 1994

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Karazin, J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court denied the plaintiff's motion to open the judgment and the plaintiff appealed to this court; subsequently, the court, *Moran, J.*, granted, in part, the plaintiff's motion for an order requiring the defendant to provide an automobile to the plaintiff, and the defendant appealed to this court. *Affirmed.*

John R. Williams, with whom, on the brief, were *Sue Wise* and *Diane Polan,* for the appellant (plaintiff),

Richard L. Albrecht, with whom, on the brief, were *Richard G. Kent* and *Jocelyn L. Birnbaum,* for the appellee-appellant (defendant).

Luba N. Hill, pro se, the appellee (plaintiff), filed a brief.

O'Connell, J. This case involves two appeals from the same marriage dissolution action. In appeal no. 11464, the plaintiff claims that (1) the procedures followed by the trial court deprived her of her right to due process of law under both the state and federal constitutions, and (2) the trial court abused its discretion in ordering the trial to begin, in dividing assets without current financial affidavits, in awarding joint custody without a custody study, in conducting ex parte proceedings off the record, and in failing to protect the plaintiff from misconduct by her attorney. In appeal no. 12066, the defendant claims

that a postjudgment order pertaining to a motor vehicle violated the automatic stay.

I

The central issue in the plaintiff's appeal involves the trial court's denial of her request for a continuance. The following facts are necessary for the disposition of this issue. On June 4, 1991, the plaintiff instituted an action seeking dissolution of the parties' fifteen year marriage, sole custody of their four minor children, child support, alimony, division of assets and sole ownership of the marital residence. On November 28, 1991, Allen S. Mall became the third attorney to represent the plaintiff. By agreement of the parties, the trial of the case was scheduled for January 3, 1992. Because of a subsequent order requiring both parties to attend a January 30, 1992 conference with a family relations officer, the trial was rescheduled for March 10, 1992. On March 3, 1992, the plaintiff's counsel appeared in court seeking a continuance "to at least May, if not June." The reasons proffered for the continuance were to obtain discovery of certain of the defendant's American Express records and because the plaintiff disagreed with the family relations officer's refusal to complete a full custody study. In response, the trial court, *Ballen, J.*, scheduled a hearing for the following day to resolve the question of whether a full custody study was necessary and would thus warrant granting the plaintiff's request for a continuance.

During the March 4 hearing, Judge Ballen heard testimony from the plaintiff and a family relations officer and thereafter denied the continuance on the basis of the

family relations officer's recommendation that a full custody report was not necessary. There is, however, disagreement as to what Judge Ballen intended would take place on March 10. When the parties appeared on March 10, Judge Ballen and defense counsel expected that the trial was to commence, but Mall protested that he understood that the trial would not go forward until he had received the American Express information. Accordingly, Mall made it clear that he was not ready to commence trial. Judge Ballen told Mall that he could present evidence concerning the American Express records at a later time but that he must proceed to trial that day on other issues. Mall then asked Judge Ballen if he could at least have until the afternoon to prepare for trial. Judge Ballen granted the request and then referred the case to Judge Karazin for trial to begin later that same day.

At the start of trial that afternoon, Mall informed Judge Karazin that the case was not ready for trial because Judge Ballen's order to commence trial was conditioned on the plaintiff's receipt of the American Express records. The defendant disagreed and Judge Karazin recessed so that he personally could ask Judge Ballen the substance of his order. Thereafer, Judge Karazin reconvened court and stated that Judge Ballen had ordered the trial to begin that day as long as the plaintiff could present her evidence concerning the American Express records when they arrived. Despite this concession, Mall informed the court that he was not prepared to start the trial and that he did not think it prudent to begin his case without his client, who was so upset about the morning's proceedings that she had left the courthouse and would not return. After inquiry by

Judge Karazin, Mall admitted that the presence of his client was not essential for him to go forward, and Judge Karazin told Mall to begin putting on evidence. A short colloquy between Mall and Judge Karazin ensued, which ended with Mall's leaving the courthouse, despite several warnings from Judge Karazin that such behavior would have serious consequences. Immediately following Mall's departure, defense counsel moved for a nonsuit, which was granted. Judge Karazin then heard the case on the defendant's counterclaim and rendered judgment thereon. It is from that judgment that the plaintiff now appeals. Additional facts are set forth in the course of our discussion.

We commence our analysis by considering the plaintiff's argument that the trial court improperly denied her request for a continuance and compounded the impropriety by proceeding to judgment in the absence of both the plaintiff and her counsel. "[T]he matter of a continuance is traditionally within the discretion of the trial judge, which will not be disturbed absent a clear abuse. . . . It must be shown that the trial judge acted arbitrarily and substantially impaired defendant's ability to defend himself, before an appellate court will conclude that the trial judge abused his discretion. The test is a stringent one." (Citations omitted; internal quotation marks omitted.) *State v. Beckenbach*, 198 Conn. 43, 47, 501 A.2d 752 (1985). Not every denial of a request for more time violates due process. *Avery v. Alabama*, 308 U.S. 444, 60 S. Ct. 321, 84 L. Ed. 377 (1940); *State v. Bethea*, 167 Conn. 80, 84, 355 A.2d 6 (1974).

The Supreme Court has been "especially hesitant to find abuse of discretion where the court has denied a

motion for continuance made on the day of trial." *Thode v. Thode*, 190 Conn. 694, 697, 462 A.2d 4 (1983); *Vossbrinck v. Vossbrinck*, 194 Conn. 229, 232, 478 A.2d 1011 (1984), cert. denied, 471 U.S. 1020, 105 S. Ct. 2048, 85 L. Ed. 2d 311 (1985); *Kinney v. Kinney*, 5 Conn. App. 484, 485, 500 A.2d 569 (1985), cert. denied, 199 Conn. 804, 506 A.2d 146, cert. denied, 497 U.S. 818, 107 S. Ct. 78, 93 L. Ed. 2d 33 (1986). "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Ungar v. Sarafite*, 376 U.S. 575, 589, 94 S. Ct. 841, 11 L. Ed. 2d 921 (1964); *State v. McKnight*, 191 Conn. 564, 576, 469 A.2d 397 (1983); *State v. Jeustiniano*, 172 Conn. 275, 285, 374 A.2d 209 (1977). We agree with the general principle implicit in the plaintiff's argument that when a court considers a request for a continuance, it must pay special attention to the facts of the individual case; but the plaintiff fails to refer to us any case in which the individual facts resulted in a continuance. In all of the cases cited by the plaintiff, the trial court's denial of a continuance was upheld on appeal.

In the present case, the plaintiff, now represented by new counsel, contends that when Mall appeared in court on March 10 he did not know that it was for trial and supports this contention with transcript references. On the other hand, defense counsel argues that the same transcript references gave the plaintiff clear notice that the case was assigned for trial on March 10. Examination of the transcripts is not dispositive of the issue. We were not there and the flavor of the court's remarks cannot be

appreciated from reading the cold black and white lines of a transcript. The nuances of voice inflection, gestures and body English are invisible on the pages of a printed transcript. It is not lost on us, however, that two of the three persons present during the colloquy (i.e., Judge Ballen and the defendant's counsel) unequivocally understood that the trial was to start on March 10. Only one of the three, Mall, did not interpret Judge Ballen's remarks as setting a firm March 10 trial date. The defendant's brief states in a reference to the transcript that "[i]t is difficult to imagine more clear and direct pronouncements of the court's intention to proceed with trial on the scheduled date."[1] We cannot ignore this impression that

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[1] We note that after Judge Ballen's conclusion during the March 4 hearing that a custody report was not necessary and that the trial should go forward, the plaintiff reiterated his claim that the trial should not start without the American Express records. In response, Judge Ballen stated that the trial is "down for March 10, and I'm going to say that come March 10, subject to the court's availability, and it may be that we get started the prior week on other matters and we can't go ahead on March 10, but if in fact we can go ahead on March 10, and if in fact you have your American Express information, we'll go ahead on March 10." Mall then asked, "[I]f I don't receive [the American Express records] by this Friday, can I tell the court that, so I can avoid a trip up here next week?" Judge Ballen responded by saying that he wanted the parties in on Friday, March 6, or March 10 to bring him up to date on the status of the records.

Judge Ballen's remarks are best understood when read in the context of what transpired during the entire two days of hearings, during which time the parties had engaged in heated discussion over the relevance of these records as well as whether the plaintiff was using the absence of the records as a way to buy time. Throughout argument, Judge Ballen stated on numerous occasions his belief that the plaintiff did not need all

the court's words made on defense counsel. We also cannot ignore Judge Ballen's response to Judge Karazin's inquiry regarding the order that trial was to commence that afternoon.

We emphasize that trial courts are afforded wide discretion in matters of continuances and our review of such matters is governed by an abuse of discretion standard. *State v. Beckenbach,* supra, 198 Conn. 47. "The [appellate] court's function is not to determine if the trial court could have reached a conclusion other than the one reached but whether the court could reasonably have reached the conclusion it did. An appellate court should 'guard against' substituting its own interpretation of the evidence on the cold record for that of the trial court on the live record. A finding cannot be rejected just because the 'reviewing judges personally disagree with the conclusion or would have found differently had they been sitting as the factfinder.' " C. Tait, Connecticut Appellate Practice and Procedure (2d Ed. 1993) § 7.6 (b), citing *Sportmen's Boating Corp. v. Hensley,* 192 Conn. 747, 751, 474 A.2d 780 (1984), and *Kaplan v. Kaplan,* 186 Conn. 387,

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the records to proceed and that the plaintiff's recent deposition of the defendant had provided the plaintiff with enough information regarding the defendant's recent American Express charges to proceed. It is clear that Judge Ballen was seeking to accommodate the plaintiff's need for all relevant information and the defendant's request that the trial commence as scheduled. In addition, Judge Ballen stated near the end of the hearing: *"All right, all right. Why don't we let it go then March 10, as originally scheduled. Hopefully somebody will get this American Express information."* (Emphasis added.) We read this statement as a clear warning that the March 10 trial was not conditioned on the receipt of the American Express records.

391, 441 A.2d 629 (1982). In deciding whether the trial court could reasonably conclude as it did, we must follow the unquestioned rule that great weight is due the action of the trial court and every reasonable presumption should be allowed in favor of the correctness of its action. *Askinazi v. Askinazi*, 34 Conn. App. 328, 342, ___ A.2d ___ (1994); *Ashton v. Ashton*, 31 Conn. App. 736, 742, 627 A.2d 943 (1993), cert. denied, 228 Conn. 901, 634 A.2d 295 (1994).

The wide latitude we accord to trial court decisions is especially applicable in cases, as here, where the meaning of spoken words can not easily be gleaned from transcript pages. We were not present at the hearings and therefore cannot appreciate the true flavor of those proceedings. We will defer to the trial court's broad discretion in such matters. In the present case, we conclude that the trial court's order denying the plaintiff's request for a continuance, but permitting the plaintiff to present the American Express records when they became available, did not constitute an abuse of discretion.

Having determined that the trial court properly denied the plaintiff's request for a continuance, we turn next to her argument that the trial court violated her due process rights by proceeding to trial in her absence. The record indicates that she was present during the hearing before Judge Ballen and that she had a full and fair opportunity to take part in the trial. Instead of taking advantage of this opportunity to be heard, she elected to forgo her right to be present during trial.

A party has a right to be present at all phases of his civil litigation. Conn. Const. art. I, § 19. This right may be

waived, however. *Rozbicki v. Huybrechts*, 218 Conn. 386, 393, 589 A.2d 363 (1991). Even in a criminal case, a defendant may waive his constitutional right to be present either "by his conduct, misconduct or his voluntary and deliberate absence from the trial without good cause." *State v. Drakeford*, 202 Conn. 75, 79, 519 A.2d 1194 (1987). "The right to be present . . . may be lost by consent, waiver or misconduct. . . . Waiver need not be express. It may be implied from the totality of acts or conduct of a defendant. . . . " Id. These principles apply with equal force in civil litigation. *Rozbicki v. Huybrechts*, supra, 393-94.

"Permitting a defendant unilaterally to prevent his case from going forward would give him the license to defy the law with impunity, and in the process, to paralyze the proceedings of courts. . . . " *State v. Drakeford*, supra, 202 Conn. 81. When the plaintiff voluntarily left the courthouse upon learning that Judge Karazin insisted on going forward, she waived her right to be present. She charted her course and cannot now complain if that course caused her to founder on rocks that she had not foreseen. See *Johnson v. United States*, 318 U.S. 189, 201, 63 S. Ct. 549, 87 L. Ed. 2d 704 (1943).

Because the plaintiff's absence was wholly voluntary, cases that she cites involving involuntary absence due to circumstances beyond a party's control are inapposite. Despite the rule of law that imputes a lawyer's acts to his client; *Allen v. Nissley*, 184 Conn. 539, 542-43, 440 A.2d 231 (1981); it is nonetheless easy to have compassion for the innocent client who suffers because of her lawyer's ill conceived conduct. This, however, is not one of those cases. Here, the plaintiff herself must shoulder the

culpability of her own actions in leaving the courthouse and refusing to return so that the orderly process of justice could go forward.[2]

The plaintiff also claims that the trial court violated her due process rights by "permitting" her privately retained counsel to walk out of the courtroom despite his having been warned that the case would go forward with or without him.[3] Despite this warning, plaintiff's counsel

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[2] Judge Karazin expressed a measure of sympathy at a hearing on a motion to open the judgment. "I was hoping you'd come back the next day. I was hoping somebody was going to come back. . . . I did not render the decision immediately. I gave what I thought was a chance . . . to your side . . . to come in and do something. Nobody did anything so I then decided the case. . . . I waited a full week before the decision. I waited for somebody to do something. Why didn't you people come in the day after?"

[3] The colloquy between Judge Karazin and Mall was as follows: "Mr. Mall: Okay. I am going to absent myself from the proceedings, Your Honor, with Your Honor's permission.

"The Court: Well, you are not either going to get my permission or my nonpermission, but I am telling you that I am going ahead with the case.

"Mr. Mall: Okay.

"The Court: I think that you are doing your client an injustice and you are putting yourself, in my opinion, at great risk for a lot of different reasons. . . . I will tell you this, that if you do leave, I will default your client for failure to appear. I have not done that yet. I have not been requested to do that and at this point I am letting them proceed on the cross complaint. . . . I haven't granted [the motion for default] yet. That's why I advised you that if you physically leave then I will default [the plaintiff] for failing to appear because at this point she is represented. I'm not sure she has to be here. . . .

"Mr. Mall: Honestly, Your Honor, I don't need her here to ask questions. However, she is the client, she is the plaintiff, she

refused to participate in the proceedings and walked out of the courthouse, thereby abandoning his client's cause. We cannot condone this conduct and, even more so, we cannot reward it with a new trial.

Mall was retained to protect his client's interests, but nevertheless elected to follow a course that the court

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is entitled to be in court if she so desires.

"The Court: She chose not to.

"Mr. Mall: I would like, if Your Honor please, if I may have five minutes just to call the client, see if I can reach her at home, and tell her what the circumstances are and give her instructions.

"The Court: All right. I'm not even going to take a recess. I'll sit on the bench. . . . Sheriff, if you will open that door for a minute and let's get a little air in here. I'll just wait on the bench.

[Mall left and called the plaintiff.]

"Mr. Mall: If Your Honor please, I was patched through by my office. They called her and she is not home.

"The Court: Okay.

* * *

"Mr. Mall: If your Honor please, I've made a decision. I have to be consistent and I'm sincere and honest in what I have said, that I'm not prepared.

* * *

"The Court: Okay. So I see you are packing up your gear. What does that mean? Does that mean you are actually leaving?

"Mr. Mall: Yes, sir. I think I should leave the premises because I don't want to waive any claims I might have.

"The Court: Well, I will entertain a motion for default for failure to appear once you have exited the courtroom, okay, because up until this point you have appeared. Your appearance is in the file and your physically being here is an appearance and it is not necessary that your client be here, as I perceive it, to have her interest protected. So you are choosing to leave. Then I will entertain a motion for default for failure to appear."

warned would fatally jeopardize those interests. On appeal, the plaintiff, through her new counsel, argues that Mall's desertion of the case was the functional equivalent of withdrawing his appearance. This is ludicrous. Our rules of practice establish the procedures by which an attorney may withdraw his appearance. Practice Book § 77. Walking out of court is not included among the prescribed withdrawal methods, nor does the plaintiff provide authority for this claim. The plaintiff's reliance on *Matza v. Matza*, 27 Conn. App. 769, 610 A.2d 702 (1992), is no longer legally viable in that subsequent to the filing of the plaintiff's brief the Supreme Court reversed that judgment. See *Matza v. Matza*, 226 Conn. 166, 627 A.2d 414 (1993). Additionally, *Matza* was never factually apposite to the present case. *Matza* involved an attorney's written motion to withdraw during trial when he believed that his client was persisting in a criminal or fraudulent course of action.[4] There is no similarity between the *Matza* scenario and the facts of the present case.

Mall left the courtroom because, by his own statement, he was not prepared for trial. We can scarcely imagine the chaos if every attorney could control the docket through a self-help continuance obtained by walking out of the courtroom. The judges of the Superior Court must remain in control of the scheduling and trial

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[4] Rule 1.16(b) of the Rules of Professional Conduct provides in pertinent part that "a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

"(1) The client persists in a course of action . . . that the lawyer reasonably believes is criminal or fraudulent. . . ."

of cases. If an attorney disagrees with the scheduling order, he should make an appropriate record and then cooperate as well as the circumstances allow. If a claimed improper scheduling order prejudices his case, he may then seek relief by way of appeal.

Judge Karazin gave Mall every possible consideration. He allowed Mall to go to Stamford to get his file and gave him an opportunity to telephone his client in an attempt to secure her attendance at the proceedings. He suggested that Mall proceed on issues other than the American Express bills and clearly, in no uncertain terms, warned him of the consequences of his absenting himself from the proceedings.[5] We cannot easily conceive of what action, short of physically restraining Mall or exercising its contempt powers, the trial court could have taken to prevent the debacle caused by Mall's absence.

II

The trial court awarded the plaintiff 60 percent of the family assets, lifetime alimony, joint custody of the four minor children, and child support. " 'In determining whether a trial court has abused its broad discretion in domestic relations matters, [the Appellate Court allows] every reasonable presumption in favor of the correctness of its action.' " *Ashton v. Ashton*, supra, 31 Conn. App. 742. The plaintiff has not persuaded us that the trial court abused its discretion in any of its orders.

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[5] See footnote 3.

The plaintiff also seeks reversal on the ground that the trial court failed to protect the plaintiff from her own attorney. The plaintiff claims that the trial court should have inquired into a possible conflict of interest between Mall and defense counsel's law firm. The plaintiff's claim of a possible conflict is based on speculation. Neither party has ever raised an issue concerning a possible conflict of interest. In support of her claim, the plaintiff points to a single sentence in the transcript in which Mall insists on a continuance because of a heavy schedule of trials, including one "of my own personal matter with [defense counsel's] office." This statement is subject to numerous interpretations and we will not speculate as to its meaning, especially where none of the parties raised such a claim at the trial level.

Finally, the plaintiff claims that the trial judge spoke ex parte with the defendant and his attorney before rendering a decision in this matter, thereby tainting the final outcome of the case. The plaintiff references the last page of the transcript of the March 10 trial wherein Judge Karazin concluded the case and defendant's counsel responded by saying, "May we go off the record for a minute." We will not find bias and misconduct on the part of the trial judge on the basis of this single, unsubstantiated reference to a possible ex parte communication. This is not an adequate record to support the plaintiff's claim.

In appeal no. 11464, the judgment of the trial court is affirmed.

III

In appeal no. 12066, the defendant appeals from the trial court's postjudgment order requiring him to return to the plaintiff a motor vehicle that she was permitted to use under the terms of the original dissolution decree.[6] The defendant claims that a signed stipulation between the parties dated July 2, 1992, permitted the defendant to obtain title to the vehicle and thereafter to obtain possession of it from the plaintiff.[7] Accordingly, in December, 1992, the defendant took possession of the vehicle. The plaintiff responded by filing a motion for order seeking return of the vehicle. The trial court, *Moran, J.*, granted the plaintiff's motion and ordered the automobile returned to her. The defendant argues that the trial court's order violated the automatic stay. We disagree.

Nothing in the July 2, 1992 stipulation permitted the defendant to obtain possession and use of the automobile. Although the stipulation allowed the defendant to pay off the lease and thereafter to acquire title to the automobile, he was not authorized to regain possession of the vehicle unilaterally in violation of the original dissolution agreement. The trial court's order requiring the defendant to return the motor vehicle to the plaintiff served to effectuate the original dissolution decree. Rather than violate the automatic stay, Judge Moran's

---

[6] Judge Karazin's order stated: "The leased Mercedes is to remain in the possession of the wife."

[7] The parties agreed in their stipulation that proceeds derived from a deposit received in connection with the sale of the marital residence would be used to pay off a host of debts, one of which was for the motor vehicle in question.

order preserved the status quo under the dissolution decree by giving rightful possession and use of the motor vehicle to the plaintiff. Accordingly, in appeal no. 12066, we affirm the judgment of the trial court.

The judgment is affirmed.

In this opinion the other judges concurred.

APPENDIX B

DECISION OF CONNECTICUT SUPREME COURT

Hill v. Hill

September 14, 1994

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-94-0130

Luba Hill

v.

James T. Hill

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (35 Conn. App. 160 [AC 11464]), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

Dated: September 14, 1994
Notice sent: 9/14/94
Clerk, Superior Court, Fairfield, FA910283614S
Clerk, Appellate Court
John R. Williams
Cohen & Wolf, P.C.

John R. Williams in support of petition; *Richard L. Albrecht* in opposition.

Supreme Court, U.S.
FILED
NOV 18 1994
OFFICE OF THE CLERK

No. 94-839

In The

Supreme Court of the United States

October Term, 1994

LUBA HILL,

Petitioner,

vs.

JAMES T. HILL,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The petitioner's statement of the case contains numerous inaccurate claims and irrelevant facts. The only material facts relevant to the present petition for certification are set forth below.

The petitioner commenced this dissolution of marriage action, and the respondent counterclaimed for dissolution. The action was assigned for trial on at least two different occasions, and the petitioner requested and received continuances. The case came up for trial on a date previously assigned by the Court, and the petitioner appeared with counsel and requested another continuance. The request was reviewed by both the trial judge and the presiding judge on family matters. After consideration of the request, the Court instructed the parties to commence trial that afternoon. The Court issued its order while all parties and all counsel were present.

At the time that trial was set to commence, counsel for the petitioner informed the Court that the petitioner was too upset to appear. The Court directed counsel to proceed, but he refused and left the courtroom despite repeated warnings from the Court as to the consequences of his actions. The Court nonsuited the petitioner and the respondent proceeded on his counterclaim. The Court entered judgment on the counterclaim and entered specific financial and custody orders thereunder.

The matter was reviewed by the trial court at a full hearing on the petitioner's Motion to Reopen Judgment, which was denied. The petitioner appealed to the Appellate Court of the State of Connecticut. The Appellate Court unanimously affirmed the judgment of the trial

court. The petitioner sought certification from the Supreme Court of the State of Connecticut, which was denied.

The Connecticut courts retain continuing jurisdiction over periodic orders including custody, visitation, child support and alimony. See Conn. Gen. State. §§ 46b-56 and 46b-86, attached as Appendix A. The petitioner has availed herself of the procedures provided by the courts.

SUMMARY OF ARGUMENT

The procedures followed in the dissolution of marriage action were more than adequate to provide the petitioner with due process of law. Her voluntary decision to deliberately absent herself from the trial proceedings was confirmed by her attorney's refusal to participate, despite the Court's repeated warnings and urgings to the contrary. The petitioner was not denied due process of law as a result of any procedures implemented by the trial court.

ARGUMENT

A. The petitioner has failed to present any special and important reasons for granting her petition.

"A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Supreme Court Rules, Rule

10.1. The Supreme Court Rules clearly set forth the factors and circumstances which will be considered by the Court in determining whether or not to grant a petition for certiorari. A petition may be granted:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Supreme Court Rules, Rule 10.1(a)-(c).

The present petition does not fall within any of the enumerated categories. This case does not involve a ruling by a United States court of appeals. The petitioner does not claim that the Connecticut Supreme Court decided a federal question in a manner that conflicts with the decision of any other state court of last resort, or of a United States court of appeals. Finally, the petitioner cannot possibly argue that the Connecticut courts have

decided an important question of federal law which has not been settled by the United States Supreme Court. The case law is replete with decisions on due process rights. Because the petitioner has failed to present any "special and important" reason to grant her petition, the Court should deny the petition.

B. The petitioner was not denied due process of law as a result of the procedures implemented by the trial court.

The petitioner claims that, in light of the fact that custody of minor children was at stake in the dissolution action, the Connecticut courts violated her due process rights by allowing trial to proceed in the absence of the petitioner and her counsel. In support of her claim that she was deprived of due process as a result of the procedures implemented by the trial court, the petitioner cites *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985). The petitioner's reliance on *Cleveland Board* is misplaced, since that case and its progeny are irrelevant to the present facts. *Cleveland Board* addressed the issue of how much process the government must afford a litigant. In this case, the petitioner was given more than a full and fair opportunity to be heard, and was repeatedly encouraged to participate in the trial. The petitioner nevertheless voluntarily waived process, and left the courtroom. Her attorney then proceeded to leave the courtroom of his own accord, despite the trial judge's explicit warnings that his departure would result in the entry of a nonsuit against his client.

Furthermore, the petitioner's reliance on cases regarding the right to conceive, bear and raise one's own children is misplaced, if not ludicrous. The cases are irrelevant to the issue at hand. The petitioner asks this Court to make a quantum leap and conclude that, because the right to conceive, bear and raise children is so compelling, the petitioner as a parent was arbitrarily denied a fair opportunity to prepare for trial and was erroneously deprived of an attorney. On the contrary, the petitioner's absence during trial was entirely voluntary. In *State v. Drakeford*, 202 Conn. 75 (1987), the defendant announced during jury voir dire that he wished to return to jail. The court informed the defendant that the case would continue without him, and allowed the defendant to be voluntarily removed from the courtroom. The State Supreme Court concluded that the trial court did not err in proceeding in the defendant's absence. Similarly, the trial judge repeatedly warned counsel for the petitioner that the Court intended to proceed with trial in his absence. The principles of *Drakeford*, a criminal case, apply with equal force to civil litigation. *Rozbicki v. Huybrechts*, 218 Conn. 386, 394 (1991).

The principal issue throughout these proceedings has been and continues to be whether the litigant or the court controls the Connecticut trial docket. The petitioner's claims have been considered by the presiding judge assigned to family matters, the trial judge, the trial judge again on the petitioner's Motion to Reopen Judgment, the Appellate Court of the State of Connecticut, and the Supreme Court of the State of Connecticut, with the same result: the court must control the docket. Yet the petitioner now attempts to convince this Court that her

request for certification is worthy of consideration. It is respectfully submitted that this Court's exercise of "judicial discretion" does not warrant such certification, because there are simply no "special and important reasons therefor". Supreme Court Rules, Rule 10.1.

The petitioner voluntarily chose to leave the courtroom after she learned that her request for a continuance had been denied. Her attorney then chose to leave. As the Appellate Court of the State of Connecticut noted in its exhaustive opinion, "[w]hen the plaintiff left the courthouse upon learning that [the trial judge] insisted on going forward, she waived her right to be present. She charted her course and cannot now complain if that course caused her to founder on rocks that she had not foreseen. See *Johnson v. United States*, 318 U.S. 189, 201, 63 S.Ct. 549, 87 L.Ed.2d 704 (1943)." *Hill v. Hill*, 35 Conn. App. 160, 168, *cert. denied*, 231 Conn. 914 (1994). Any prejudice suffered by the petitioner is a direct result of her voluntary departure from the courtroom, not of any procedures implemented by the trial court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES T. HILL, Respondent

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Sec. 46b-56. (Formerly Sec. 46-42). Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment. Access to records of minor children by noncustodial parent. (a) In any controversy before the superior court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may at any time make or modify any proper order regarding the education and support of the children and of care, custody and visitation if it has jurisdiction under the provisions of chapter 815o. Subject to the provisions of section 46b-56a, the court may assign the custody of any child to the parents jointly, to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party including but not limited to grandparents.

(b) In making or modifying any order with respect to custody or visitation, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interests of the child.

(c) In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84.

(d) When the court is not sitting, any judge of the court may make any order in the cause which the court might make under subsection (a) of this section, including orders of injunction, prior to any action in the cause by the court.

(e) A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child unless otherwise ordered by the court for good cause shown.

Sec. 46b-86. (Formerly Sec. 46-54). Modification of alimony or support orders and judgments. (a) Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support or an order for alimony or support pendente lite may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a, unless there was a specific finding on the record that the application of the guidelines would be inequitable or inappropriate. There shall be a rebuttable presumption that any deviation of less than fifteen percent from the child support guidelines is not substantial and any deviation of fifteen percent or more from the guidelines is substantial. Modification may be made of such support order without regard to whether the order was issued before, on or after May 9, 1991. In determining whether to modify a child support order based on a substantial deviation from such child support guidelines the court shall consider the division of real and personal property between the parties set forth in the final decree and the benefits accruing to the child as the result of such division. After the date of judgment, modification of any child support order issued before or after July 1, 1990, may be made upon a showing of such substantial change of circumstances, whether or not such change of circumstances was contemplated at the time of dissolution. By written agreement, stipulation or by decision of the court, those items or circumstances that were contemplated and

are not to be changed may be specified in the written agreement, stipulation or decision of the court. This section shall not apply to assignments under section 46b-81 or to any assignment of the estate or a portion thereof of one party to the other party under prior law. No order for periodic payment of permanent alimony or support may be subject to retroactive modification, except that the court may order modification with respect to any period during which there is a pending motion for modification of an alimony or support order from the date of service of notice of such pending motion upon the opposing party pursuant to section 52-50.

(b) In an action for divorce, dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the superior court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.

(c) When one of the parties, or a child of the parties, is receiving or has received aid or care from the state under its afdc program as provided in Title IV-A of the Social Security Act or under its foster care program as provided in Title IV-E of the Social Security Act, or where

one of the parties has applied for child support enforcement services under Title IV-D of the Social Security Act as provided in section 17-578, such motion to modify shall be filed with the family support magistrate division for determination in accordance with subsection (m) of section 46b-231.